

# **Cumulative Impacts and the Permitting Process**

## **Introduction**

This memorandum presents ideas regarding cumulative impacts and the permitting process that have been debated and discussed for several years by members of the New Jersey Environmental Justice Alliance, Environmental Justice Advisory Council to the New Jersey Department of Environmental Protection (NJDEP), Ironbound Community Corporation, Environmental Research Foundation, and Center for the Urban Environment. Although these ideas represent a considerable amount of thought they are not intended to be a final solution but a contribution to a discussion that will involve many participants.

The concept of cumulative impacts (CI) should be incorporated into the permitting process in such a way that at least two goals are achieved: 1) Applications for new pollution permits can be denied in environmental justice (EJ) communities, and communities already overburdened with pollution, if granting the permit would increase the amount of pollution in the community; 2) The amount of pollution in a community would be decreased by a facility's operations or actions when the facility applied for a permit renewal. To achieve these goals NJDEP will have to identify EJ and overburdened communities and then apply the concept of CI in several specific ways.

## **Applying Cumulative Impacts in the Permitting Process**

There are at least two ideas connected to CI that could be used to protect EJ and overburdened communities from new sources of pollution and to reduce the amount of pollution emitted by existing sources.

The first idea is to require facilities applying for new permits or permit renewals in EJ and overburdened communities to demonstrate that they have applied the precautionary principle to their operations. Adhering to the precautionary principle would require showing that they have minimized, or eliminated, the pollution they produce by considering all alternatives to the manner in which they operate.

The second idea is to require permit applicants to perform a CI assessment after they have demonstrated that the precautionary principle has been applied. In the case of a new permit application the CI assessment would be used to demonstrate that the new facility would result in no net increase, or a net decrease, in pollution. In the case of a permit renewal application it would be used to demonstrate that facility operations or actions would result in a net decrease in pollution emissions. A new facility would produce no net increase in pollution by either emitting no pollution or by taking actions to reduce pollution emissions in the community by an amount greater than the amount of pollution it emits. In other words, a facility could take actions that would offset the pollution it is discharging but those offsets would have to occur in the community in which it operates. In addition, if a new facility chose to offset its pollution emissions it would have to demonstrate a net reduction in pollution. If a new facility did not choose to offset

emissions then it could demonstrate that its operations would result in no net increase in pollution by establishing it produced no emissions. The CI assessment would also have to demonstrate how reductions in pollution would be measured and monitored.

The CI assessment for a permit renewal applicant would have to demonstrate that its operations or actions would result in a net decrease in pollution in the community. A facility could establish this by showing that it would produce less pollution or that it would take actions that would more than offset the amount of pollution it produced. The same restrictions that applied to offsets for new applicants would apply to facilities applying for a permit renewal.

If, after applying the precautionary principle and performing a CI assessment a new permit applicant could not demonstrate it would either produce no net increase in pollution, or cause a net decrease in pollution if it were using offsets, then the permit application would be denied. If, after applying the precautionary principle and performing a CI assessment, an applicant for a permit renewal could not demonstrate that its operations or actions would result in a net decrease in pollution, then the permit application would be denied.

### **Identifying EJ and Overburdened Communities**

EJ and overburdened communities could be identified using the CI screening tool that NJDEP is currently developing. NJDEP's screening tool should be developed in such a way that it approximates the tool that California EPA is developing.

But perhaps the most difficult question to answer in this entire process is how EJ and overburdened communities would be defined using the CI screening tool. There are several possibilities. The simplest approach might be that a certain number or percentage of communities with the highest CI score, as determined by the screening tool, would use the CI permitting process described above. Alternatively, it could be a neighborhood that is in violation of a certain number of, or certain specified, pollutant standards. Or it could be a neighborhood whose residents are suffering from high rates of certain diseases that can be connected to pollution. These approaches could be used to identify overburdened communities. To identify EJ communities New Jersey could follow Connecticut's example and use racial and income characteristics. It should be noted that being an EJ community and being an overburdened community are not necessarily the same thing (see below). The definitions for each should be developed by a working group that includes NJDEP staff, EJ advocates, environmental advocates, and others.

Overburdened EJ communities could also be made eligible for incentives and resources that would be used: to attract non-polluting industry; to attract the use and development (including research) of renewable energy sources; for energy efficiency; to attract suppliers of fresh food; to increase open space; and to increase environmental enforcement.

A CI score would be calculated for all communities in New Jersey and those that fall under the definition of EJ or overburdened would use the CI permitting process described above. Although this process would not be required for other communities, CI scores would be available for all New Jersey citizens so that residents of all communities could use them to argue for protection from pollution.

The NJDEP screening tool should also be developed in a manner that would allow it to be used by New Jersey municipalities to produce and maintain Environmental Resource Inventories.

### **EJ vs. Overburdened (vs. Vulnerable)**

One persistent question with respect to CI is whether we should attempt to identify EJ communities or overburdened communities, or both. EJ communities could be defined as having either a significant Of Color or low-income population but not necessarily as suffering from a significant amount of pollution. Overburdened communities could be defined as suffering from a significant amount of pollution but not necessarily as having a significant Of Color or low-income population. Here we have advocated that both types of communities should be identified, and both should benefit from a CI permitting process, because both types of communities are also vulnerable communities. As a practical matter the distinction between the definition of EJ and overburdened communities might not matter because the most heavily burdened communities are probably EJ communities. But this should be confirmed by actually identifying both types of communities and confirming the overlap.

Yet another approach might be to specifically define and identify vulnerable communities instead of, or in addition to, EJ and overburdened communities.

Another issue that is implicitly contained in the debate over the definition of EJ and overburdened communities is how to define community as a physical or geographical location. Here again, there are several possibilities. The physical boundaries of a community could be established by defining a census tract or block group as a community. Or a more complex definition could be used. For example, in a CI model municipal ordinance that the New Jersey Environmental Justice Alliance is developing, communities are defined as: “discrete areas of a municipality, such as neighborhoods, housing developments or subdivisions, public housing projects or other predominantly residential sectors that generally share certain commonly-held characteristics, such as geographic proximity, lower income, race or ethnicity within a particular area”.

### **Cumulative Impacts in Permitting in Outline Form**

- A. Use NJDEP screening tool to identify overburdened and EJ communities.
  1. Develop tool to approximate California tool.
  2. Identify EJ and overburdened communities by:
    - a. Certain number or percentage of neighborhoods with highest CI scores.

- b. Communities that violate specified pollution standards, or a specified number of pollution standards.
- c. Communities that have high rates of certain pollution related diseases.
- d. Communities with certain racial or income characteristics.

Note: a-c above would identify overburdened communities and d would identify EJ communities.

- 3. EJ and overburdened communities would use CI permitting process described below.
- 4. All communities would receive a CI score so that residents could use the information to advocate for protection from pollution.
- 5. NJDEP screening tool would also be developed so that municipalities could use it to produce environmental resource inventories.
- 6. Overburdened EJ communities would be eligible for incentives that would be used: to attract non-polluting industry; to attract the use and development (including research) of renewable energy sources; for energy efficiency; to attract suppliers of fresh food; to increase open space; and to increase environmental enforcement.

## B. Applying Cumulative Impacts to the Permitting Process

- 1. Applicants for new permits in EJ and overburdened communities would have to demonstrate that they had applied the precautionary principle to their operations.
  - a. They would then have to perform a CI assessment that demonstrates:
    - 1. Their operations would produce no added pollution; or
    - 2. They have taken actions to offset any pollution produced by their operations.
      - a. An offset would have to occur in the same community where the facility operates and would have to result in a net decrease in pollution in the community.
  - b. A CI assessment would also have to detail how a reduction in pollution would be measured and monitored.
- 2. Applicants for permit renewal would have to demonstrate that they had applied the precautionary principle to their operations.
  - a. Then they would have to perform a CI assessment that demonstrates:
    - 1. Their operations would result in a decrease in pollution emissions; or
    - 2. They had taken actions to offset pollution so that there would be a net decrease in pollution in the community in which they operated.
  - b. The CI assessment would also have to detail how a reduction in pollution would be measured and monitored.

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